

Texas Department of Transportation

DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

RECEIVED

January 9, 1995

JAN 13 95

Union Committee

The Honorable Dan Morales
Attorney General
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

SJS
File# MC-31262-95
JD# 31262

RQ-782

Re: Whether income from land purchased
with constitutionally dedicated funds
must be credited to the constitutional
fund

Dear General Morales:

On September 21, 1994, the State Comptroller's Office entered into a Contract for Information About State Claims with Mr. T.E. Jamison. Mr. Jamison has agreed to provide the Texas Department of Transportation (TxDOT) with information regarding the State's title to several tracts of land in an oil and gas field that has been operated as a unitized tract since the mid-1960's. The Energy Division of the Office of the Attorney General believes the State is entitled to some \$5,000,000 or more in royalties and has offered to pursue litigation to recover that amount. A question has now arisen as to the proper disposition of any revenues that may be recovered in such litigation. I would like to request an opinion on whether income from land purchased with constitutionally dedicated funds must be credited to the constitutional fund.

Generally, oil and gas leasing on state agency property, including highway right of way, is handled by the School Land Board (Nat. Res. Code, §32.001, et seq.). Although §32.157 of the Natural Resources Code directs that any funds collected as royalty shall be deposited in the special mineral fund of the agency owning the land, the Comptroller deposits all such funds creditable to TxDOT in the State Highway Fund. However, §32.002 specifically excepts from the provisions of that chapter highway right of way located within 2,500 feet of a producing well. The subject property falls under that exception. The law is silent as to the disposition of revenues from highway right of way outside the scope of Chapter 32. Section 404.094 of the Texas Government Code

requires that money not expressly required to be deposited in another fund be deposited in the general revenue fund. However, it is our position that the funds in question are required to be deposited in the State Highway Fund.

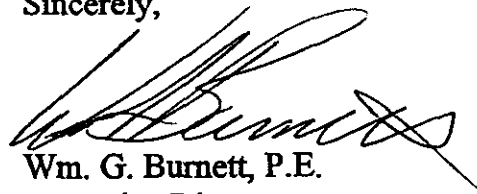
Art. 8, §7-a of the Texas Constitution dedicates revenues from motor vehicle registration fees and motor fuel taxes to certain public road purposes, including acquiring rights of way and constructing, maintaining, and policing roadways. It is a well-settled principle of law that such constitutionally dedicated funds cannot be diverted to any other purpose. See, Gulf Insurance Co. v. James, 185 S.W.2d 966 (Tex. 1945); Brazos River Conservation and Reclamation Dist. v. McCraw, 91 S.W.2d 665 (Tex. 1939); Lawson v. Baker, 220 S.W. 260 (Tex. Civ. App. - Austin 1920, writ ref'd.). Likewise, property purchased with constitutionally dedicated funds cannot be put to any use inconsistent with constitutional requirements. See Op. Atty. Gen. JM-1170 (1990). In order to meet the constitutional requirement that the funds used to purchase the right of way be applied only to highway purposes, any mineral leasing of the right of way must ultimately serve to benefit public roads.

Article 6694, V.A.C.S. provides that

[a]ll funds coming into the hands of the Commission derived from the registration fees or other sources provided for in this subdivision, as collected, shall be deposited with the State Treasurer to the credit of a special fund designated as 'The State Highway Fund' . . .

Sections 153.503 through 153.505 of the Texas Tax Code allocate motor fuel taxes to the State Highway Fund, and Article 6675a-10, V.A.C.S. allocates a portion of motor vehicle registration fees to the State Highway Fund. Because the subject property was acquired with funds that are constitutionally dedicated to public road purposes, any revenues that may be recovered under the contract with Mr. Jamison should be deposited in the State Highway Fund for the uses specified by law.

Sincerely,

A handwritten signature in dark ink, appearing to read "Wm. G. Burnett", is written over a horizontal line.

Wm. G. Burnett, P.E.
Executive Director